IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3445 OF 2004

Shri Dnyanoba Shivram Rikame & Ors. : Petitioners

V/s.

State of Maharashtra & Ors. : Respondents

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Mr.Ashok B. Tajane for Mr.R.B.Jagtap for the petitioners.

Mr.A.H.Palekar, Asstt. Govt. Pleader, for the respondents.

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CORAM : S.A. BOBDE, J.

October 3, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Palekar, learned Asstt. Govt. Pleader for the respondents, waives service of rule.

Heard by consent.

2. The petitioners have challenged the order dated 11.2.2004 passed by the Addl. Commissioner, Pune Division, Pune. By the impugned order, the learned Addl. Commissioner has refused to delete the petitioners' land bearing gat no.85(part) out of one hectare 21 ares which has been acquired on 6.1.2000.

3. The land has already been acquired and award has already been passed. The petitioners objected to the acquisition of gat no.85 on the ground that the holding of each of the petitioners is less than 8 acres in accordance with their 1/5th share in the ancestral land. Applying the circular dated 28.6.1998, it is necessary that their separate shareholding should be taken into account. This submission of the petitioners is rejected by the learned Addl. Commissioner holding that the total holding of the petitioners which is based on Slab Register dated 30.6.1989 is 05 hectares 26 ares. The petitioners appear to have not submitted any evidence about legal partition of the lands or partition by metes and bounds.

4. That in any case, on the basis of their total holding, their individual 1/5th share comes to 75.4 ares which is admittedly less than 8 acres. In view of the fact that even otherwise, the Addl. Commissioner's circular dated 28.6.1998 has been cancelled. I find no error apparent on the face of the order of the learned Addl. Commissioner by which he has rejected the petitioners' request. The learned counsel for the petitioners relied on a judgement of this Court in Vijay v. State of Maharashtra (1995 (1) Mh.L.J. 42) which turns on the fact of that case and does

not help the petitioners.

5. In the result, the rule stands discharged.

S.A. BOBDE, J.